بسم الله الرحمن الرحيم

وجاهدهم به جهادا كبيرا

JIHAD AND THE ISLAMIC LAW OF WAR

THE ROYAL AAL AL-BAYT INSTITUTE FOR ISLAMIC THOUGHT
2009 • JORDAN

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OVERVIEW

WHAT IS THE Islamic law of war and peace? This crucial question underlies all discussion of *jihad*, perhaps the most misrepresented of ideas in the West's understanding of Islam. "Holy war",[1] "a faith spread by the sword",[2] "Islamofascism",[3] "infidel",[4] and many of the other catch phrases so popular in the uninformed debate on this topic only serve to muddle the issue. It is therefore useful, and even imperative, to explain what *jihad* is, what it means to Muslims, and how it relates to the concrete issues of war and peace. Since one cannot hope to understand a law by studying the actions of those who break it, we will not discuss here the actions of individuals, but focus on the very sources of Islamic law itself as they relate to *jihad*, war, and peace. Acts of violence and situations of peace can only be judged, from the point of view of Islam and the *Sharīʿah* (Islamic law), on how fully they accord with the principles set down by the Qur'an, the teachings of the Prophet, and the precedent set by the tradition of religious scholars through the centuries.

Naked assertions by individuals who claim to speak in the name of Islam without a foundation in these authoritative sources and principles *must* be examined in light of those very sources and principles, and not accepted at face value. What follows is an attempt to describe the most important issues surrounding the Islamic law of war and peace, and to lay out **the mainstream, traditional Islamic position, comprised of three essential principles:**

- **Non-combatants are not legitimate targets.**
- **The religion of a person or persons in no way constitutes a cause for war against them.**
- **Aggression is prohibited, but the use of force is justified in self-defense, for protection of sovereignty, and in defense of all innocent people.**

We will expand upon these principles in what follows.

1

DOES *JIHAD* MEAN "HOLY WAR"?

ALTHOUGH VERY OFTEN the Arabic word *jihad* is glossed as "holy war", if we were to translate "holy war" back into Arabic we would have *al-harb al-muqaddas*, a term which does not exist in any form in the Islamic tradition. *Jihad*, both linguistically and as a technical term, means "struggle", and is etymologically related to the words *mujahadah*, which also means struggle or contention, and *ijtihad*, which is the effort exerted by jurists to arrive at correct judgments in Islamic law.

"Holy war" is actually a term that comes out of Christianity. Until its acceptance by the Emperor Constantine in the fourth century, Christianity was a minority religion that was often persecuted, and which grew only through preaching and missionary activity. Christians were in no position to make war, and indeed Christ's teachings to turn the other cheek kept them from retaliation against their persecutors in most cases. When Christians came to possess real military power, however,

they were faced with the task of fighting wars and of deciding when, if ever, a Christian could fight in a war and still be considered a true follower of Christ. Augustine was one of the earliest of Church thinkers to address this question in detail, discussing it under the general rubric of "just war". Both he and his mentor Ambrose of Milan described situations in which justice would compel a Christians to take up arms, but without forgetting that war should only be seen as a necessary evil and that it should be stopped once peace is achieved. Such ideas were later elaborated upon by such figures as Thomas Aquinas and Hugo Grotius.

It was with the rise of the papal states and ultimately with the declaration of the Crusades that the concept of "holy war" came to be an important term. It is noteworthy that the earliest "holy wars" were often wars by Christians against other Christians, in the sense that the protagonists saw themselves as carrying out the will of God. However, it was with the "taking of the cross" by the Christian warriors sent by Pope Urban in the eleventh century that "just war" became "holy war" in its fullest sense. It was only with the authorization of the Pope that a knight could adopt the symbol of the cross. "Holy war", as a term, thus has its origins in Christianity, not Islam.

This gradual transition from total pacifism to just war to holy war did not occur in Islam. The nonviolent period lasted only until the Prophet emigrated to Medina, after which

the community was forced to ponder the conduct of war. The early history of Islam, unlike that of Christianity, was marked by overwhelming military and political success. However, rather than stamp a permanently warlike character on Islam, the very fact that Muslims received revelation and guidance from the Prophet on matters of war established a set of rules and legal precedent that set clear and unmistakable boundaries. As Christians came to learn after they had gained political power, in a world full of evil and human passions war was inevitable, and even followers of Christ's teaching of turning the other cheek were forced to formulate a concept of "just war". They lacked, however, the advantage of a clear and binding precedent that not only provide that *jus ad bellum*, or the conditions under which a just war could be waged, but *jus in bellum*, the rules on how the fighting itself is carried out. This is precisely what the Qur'an, the life and teachings of the Prophet, and the actions of the early community gave to Islamic law.

The term "holy war" is thus inaccurate and unhelpful, implying that for Muslims war has a kind of supernatural and unreasoned quality removed from the exigencies of the world. On the contrary, Islamic law treats war as a sometimes necessary evil, whose conduct is constrained by concrete goals of justice and fairness in this world. If warfare has any worth (and indeed, those martyred while fighting justly in the way of God are promised Paradise), it

comes from what is fought *for*, not from the fighting itself. Jurists of Islamic law never ask whether war is "holy". Rather, they determine, based on Islamic teaching, if it is right and just. An unjust attack by a group of Muslims acting outside of the law might be called war, but it is not *jihad* in the eyes of traditional Islam. Moreover, as the verses of the Qur'an and sayings of the Prophet below will show, *jihad* is also a name for a spiritual struggle or taking a principled stand in a difficult situation.

Thus, not all war is *jihad*, and not all *jihad* is war.

2

WHAT IS THE ROLE OF NON-VIOLENT *JIHAD*?

THE HISTORY of the Muslim community under the Prophet is normally divided into two periods, the Meccan and the Medinan. Qur'anic chapters and verses are normally classified accordingly, depending on when the verse was revealed. The Muslim *hijri* calendar begins with the emigration (*hijrah*) of the Prophet and his Companions from Mecca to Medina, where they established the first Islamic political entity. The Meccan period begins with the Prophet's first revelation from the archangel Gabriel, and

ends thirteen years later with the *hijrah*, while the Medinan period begins with *hijrah* and ends ten years later with the Prophet's death in 632 of the common era.

In the Meccan period the Muslims were a minority religious community amongst the primarily polytheistic pagan Arabs, and possessed no political power or protection aside from that which was provided by their familial bonds. They did not constitute a formal organization, but rather were a self-selected group of individuals who were bound to each other spiritually, and who were often verbally and physically abused for their practices and their belief in the one God. During this period the Prophet was neither judge nor ruler, but guide and teacher, and brought news of the true nature of things, especially as it concerned the oneness of God and the inevitable Day of Judgment. The commands and prohibitions during these years were of a spiritual nature, such as performing prayer and keeping away from unclean things, and there was no earthly punishment for going against them.

Once the Prophet and Companions emigrated to Medina, the Prophet took on the power to govern politically over the Muslims and non-Muslims of Medina. He became both a spiritual and temporal leader, and as such became responsible for both the spiritual and material needs of the people, whereas in the Meccan period his primary mission was to be a *bringer of glad-tidings and a warner*

(the Holy Qur'an, *Al-Fatir,* 35:24). These material needs included the defense and maintenance of the new Islamic state, by force of arms if necessary. While the Muslims in the Meccan period were expressly forbidden to take up arms against their persecutors, in the Medinan period they are given permission to fight their enemies militarily, as will be discussed below.

Some have speculated that the Muslim community was not permitted to take up arms in the Meccan period because they were weak and outnumbered, but this is to forget that they were outnumbered three to one at the Battle of Badr, which took place in the Medinan period. Moreover, this explanation contradicts Qur'anic verses such as, *If there are ten steadfast among you, they will defeat two hundred, and one hundred among you will defeat one thousand of those who disbelieve, for they are a people who do not understand*. (*Al-Anfal* 8:65) Or, *How many a small party has defeated a larger party by God's leave! God is with the steadfast*. (*Al-Baqarah* 2:249)

Still, we find that in this period of non-violent stead-fastness, under the frequently violent persecution of the Meccan pagans to the new religion, the Muslims are commanded to carry out struggle, or *jihad*: *Do not obey the disbelievers, and struggle against them with it a great struggle* (*Al-Furqan* 25:52). *Then indeed your Lord—for those who emigrated after they were put through tribulation, then struggled and were*

patient—indeed your Lord, after that, is forgiving, merciful (*Al-Nahl* 16: 110). Verse 25:52 is universally considered to be Meccan by traditional exegetes of the Qur'an,[5] and Ibn 'Abbas pointed out that *struggle ... with it* means to struggle using the Qur'an, that is, with the truth contained therein against the false beliefs of the pagans. Verse 16:110 is thought by some to be Medinan, but the majority of exegetes consider the emigration mentioned to refer to the flight of some of the Muslim community to seek asylum with the King of Abyssinia, which occurred in the Meccan period.

The Prophet himself praised non-violent *jihad*. He said, "The best struggle (*jihad*) is to speak the truth before a tyrannical ruler,"[6] and, "The best struggle is to struggle against your soul and your passions in the way of God Most High."[7] Some have questioned the authenticity of the *hadith* which describes the Prophet returning from a battle with the Companions and saying, "We have returned from the lesser struggle to the greater struggle," which is often cited by those seeking to recover the traditional meaning of *jihad*. If the *hadith* is indeed inauthentic, the meaning is still found in the aforementioned *hadith* that places the struggle against the soul above all other struggles. Moreover there are numerous other *hadith* which place the efforts required in the spiritual life above the rewards of physical combat. The Prophet once said, "Shall I tell you of your best deed,

the most pleasing to your King, the loftiest in your ranks, better than the giving of gold and silver, and better than meeting your enemy in battle, beheading him whilst he beheads you? The remembrance of God (*dhikr Allah*)."[8]

Indeed, so important is the spiritual element of struggle that even when Muslims are commanded to fight they must first insure that the truth does not die with those who put their lives at risk in battle. *And the believers should not all go out to fight. Of every troop of them, a party only should go forth, that they (who are left behind) may gain sound knowledge in religion, and that they may warn their folk when they return to them, so that they may beware.* (*Al-Tawbah* 9:122)

The superior and inherent worth of spiritual struggle over armed struggle is an immutable value in Islam, but placing the spiritual above the worldly does not erase worldly concerns. It is universally agreed that Islamic law came to sanction armed struggle and war, but this sanction came with a *law of war* which is binding for Muslims. This law of war answers two fundamental questions: Why do we fight? How should we fight?

In almost all cases during the career of the Prophet armed combat and war took place with Muslims on one side and non-Muslims on the other. These were not tribal battles, since members of the same tribe and often the same family fought on opposite sides. Nor were they religious battles in the sense that Muslims fought non-Muslims for

the mere fact of their being non-Muslims. As we shall see, Muslims fought for the protection of their basic *rights*: the right to life, property, honor, and most importantly the right to believe and practice their faith. Their grievances against their enemies were expulsion from their homes and seizure of their property; persecution in the form of torture and murder; and pressure to give up their faith in the one God and the Prophet Muhammad.

A cursory knowledge of the life of the Prophet will show that one need not go into theology to explain why Muslims fought their enemies. **The fact that Muslims were persecuted, reviled, tortured, pitted against their own families, exiled, embargoed, and killed provides more than enough justification for their resort to force.**

3

DO MUSLIMS GO TO WAR AGAINST OTHERS MERELY BECAUSE THEY ARE NON-MUSLIMS?

MOST SCHOLARS AGREE that the first verses to permit fighting were:

> *Truly God defends those who believe. Truly God loves not every disbelieving traitor. Permission is given to those who*

are fought because they have been wronged. Surely, God is able to give them victory—those who have been expelled from their homes unjustly only because they said: "Our Lord is God." And if it were not that God repelled some people by means of others, then monasteries, churches, synagogues, and mosques, wherein the Name of God is mentioned much would surely have been pulled down. Verily, God will help those who help Him. Truly, God is powerful and mighty — those who, if We give them power in the land, establish worship and pay the poor-due and enjoin kindness and forbid iniquity. And to God belongs the outcome of [all] affairs. (*Al-Hajj* 22:38-41)[9]

It is of the greatest significance that the verses finally giving Muslims permission to use force to defend themselves should make mention of the houses of worship of other religions. God not only protects Muslims by repelling some by means of others, He also protects religion as such, which is described here in terms of the places wherein the name of God is remembered. As will be made clear below, **it is the not the religious identity of people which justifies the use of force against them, but their aggression and crimes against the Muslim community** and, by extension, other religious communities under Muslim rule.

4

WHAT ARE THE FIVE BASIC RIGHTS OF ISLAMIC LAW, AND HOW DO THEY RELATE TO WAR?

THE QUESTION OF PROTECTING religion in war is a crucial one, for indeed he law of war in Islam is a subset of all Islamic law (the *Shari'ah*), and as such it must conform to the principles of that encompassing law. Jurists of the (overwhelming majority) orthodox tradition have, in codifying the law, identified those fundamentals which the law must protect and which Muslims cannot violate. These are usually called "The Aims of the Law" (*maqasid al-shari'ah*), but in effect they amount to the Five Basic Rights. They are: (1) Religion; (2) Life; (3) Mind; (4) Honor; (5) Property. Muslims have always understood the value of the outward (the restrictions and prohibitions of the law) to derive ultimately from its protection of the inward (the human being's relationship with God and his own true nature), hence the traditional place of religion as the first Basic Right before the law. It is one reason why the Prophet placed the remembrance of God above all other acts. Yet Islamic law, and *ipso facto* the law of war, must take into account the other Basic Rights. The Right to Life includes safety from murder, torture, terror, and starvation. The Right to Mind encompasses the Islamic prohibition of

intoxication, and more generally can be extended to those things which hinder human objectivity, such as misinformation, miseducation, and lying in general. The Right to Honor exists in what has come to be known in the modern world as "human dignity", which in the Islamic context begins from the integrity of the family (and particularly of one's lineage) and extends to the protection of one's good name and an environment of mutual respect in society. The Right to Property protects against theft, destruction, and dispossession.

These Five Basic Rights all pertain to the conduct of war, enshrining the principle that the material is ultimately justified in light of the spiritual, and that the spiritual must guide the conduct of the material. **In other words, morality and ethics apply to war, *equally and according to the same principles*, as they apply to economic transactions, marriage and sexuality, and government**. Indeed, it is an abuse of good sense to suppose that a civilization which developed a highly sophisticated law and system of justice, an international system of trade and credit, peaks of art and philosophy, and major advances in science and technology—all within a world view formed by the Qur'an and the teachings of the Prophet—could somehow have omitted to address justice, harmony, and fairness when it came to questions of war and peace.

5

WHAT DOES THE QUR'AN SAY ABOUT *JIHAD* AND FIGHTING?

BELOW ARE SOME Qur'anic verses pertaining to *jihad* and fighting. Care has been taken to quote these at some length, as the relevant passages are often abbreviated and quoted out of context in much of the discussion about the Qur'an and *jihad*. When read as a whole, the justice and fairness of the Qur'anic commands speak for themselves:

> *Fight in the way of God against those who fight against you, but begin not hostilities. Lo! God loveth not aggressors./And slay them wherever you find them, and drive them out of the places whence they drove you out, for tribulation is worse than slaughter. And fight not with them at the Inviolable Place of Worship until they first attack you there, but if they attack you (there) then slay them. Such is the recompense of disbelievers. / But if they desist, then lo! God is Forgiving, Merciful. / And fight them until tribulation is no more, and religion is for God. But if they desist, then let there be no hostility except against wrong-doers. / The forbidden month for the forbidden month, and forbidden things in retaliation. And one who attacketh you, attack him in like manner as he attacked you. Observe your duty to God, and know that God is with the pious.* (*Al-Baqarah* 2:190-194)

Warfare is ordained for you, though it is hateful unto you; but it may happen that ye hate a thing which is good for you, and it may happen that ye love a thing which is bad for you. God knoweth, ye know not. / They question thee (O Muhammad) with regard to warfare in the sacred month. Say: Warfare therein is a great (transgression), but to turn (men) from the way of God, and to disbelieve in Him and in the Inviolable Place of Worship, and to expel His people thence, is a greater with God; for persecution is worse than killing. And they will not cease from fighting against you till they have made you renegades from your religion, if they can. And whoso becometh a renegade and dieth in his disbelief: such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide therein. (*Al-Baqarah* 2:216-217)

God forbids you not, with regard to those who fight you not for (your) religion nor drive you out of your homes, from dealing kindly and justly with them: for God loveth those who are just. / God only forbids you, with regard to those who fight you for (your) religion, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong. (*Al-Mumtahanah* 60:8-9)

Tell those who disbelieve that if they cease (from persecution

> *of believers) that which is past will be forgiven them; but if they return (thereto) then the example of the men of old hath already gone (before them, for a warning). / And fight them until persecution is no more, and religion is all for God. But if they cease, then lo! God is Seer of what they do.* (*Al-Anfal* 8:38-39)

Read as a whole, and not selectively quoted out of context, these verses make it clear that Muslims fight because they have been wronged; because they have been persecuted, which is seen as worse than killing; because they have been made to renounce their religion; and because they have been driven out of their homes. **Muslims must fight their enemies not because of who they are, but because of what they have done to them and continue to do to them.**

It must be remembered that the Prophet began preaching while still a respected and admired member of his community. It was the teachings he brought which the Quraysh saw as a threat, not the Prophet himself as a man, nor his followers as a group. He never threatened the Quraysh (other than warning them of the Day of Judgment) or used any kind of coercion whatsoever. The young Muslim community began to suffer persecution under the Quraysh because Islam was seen as a threat to their own pagan religion and to Mecca's role as a place of pilgrimage

(and hence to their economic prosperity). The first reactions of the Muslims were to endure, then to flee, since they were not yet permitted to fight back. It was only after the Quraysh had made life unbearable—by embargoing the Muslims and finally even attempting to assassinate the Prophet—that the young community finally migrated to Medina. **Indeed, the Muslims had exhausted all other options before resorting to force.**

6

WHEN DO MUSLIMS MAKE TREATIES?

THOUGH MUSLIMS were eventually given permission to retaliate, in Islamic law the goal of redressing grievances is not mere revenge, but the establishment of peace. For this reason the Qur'an often makes mention of treaties of peace with non-Muslims, including the polytheists. The following verses are examples from the Qur'an involving treaties and agreements of peace with non-Muslims, again quoted at length so as to show their context:

> *They long that ye should disbelieve even as they disbelieve, that ye may be upon a level (with them). So choose not friends from them till they forsake their homes in the way of*

God; if they turn back (to enmity) then take them and kill them wherever ye find them, and choose no friend nor helper from among them, / Except those who seek refuge with a people between whom and you there is a covenant, or (those who) come unto you because their hearts forbid them to make war on you or make war on their own folk. Had God willed He could have given them power over you so that assuredly they would have fought you. So, if they hold aloof from you and wage not war against you and offer you peace, God alloweth you no way against them. / Ye will find others who desire that they should have security from you, and security from their own folk. So often as they are returned to hostility they are plunged therein. If they keep not aloof from you nor offer you peace nor hold their hands, then take them and kill them wherever ye find them. Against such We have given you clear warrant. (*Al-Nisa'* 4:89-91)

And if they break their pledges after their treaty (hath been made with you) and assail your religion, then fight the heads of disbelief—Lo! they have no binding oaths—in order that they may desist. / Will ye not fight a folk who broke their solemn pledges, and purposed to drive out the messenger and did attack you first ? What! Fear ye them ? Now God hath more right that ye should fear Him, if ye are believers. / Fight them! God will chastise them at your hands, and He will lay them low and give you victory over them, and He

will heal the breasts of folk who are believers. / And He will remove the anger of their hearts. God relenteth toward whom He will. God is Knowing, Wise. / Or deemed ye that ye would be left (in peace) when God yet knoweth not those of you who strive, choosing for familiar none save God and His messenger and the believers ? God is Informed of what ye do. (*Al-Tawbah* 9:12-16)

Those of them with whom thou madest a treaty, and then at every opportunity they break their treaty, and they keep not duty (to God). / If thou comest on them in the war, deal with them so as to strike fear in those who are behind them, that haply they may remember. / And if thou fearest treachery from any folk, then throw back to them (their treaty) fairly. Lo! God loveth not the treacherous. / And let not those who disbelieve suppose that they can outstrip (God's Purpose). Lo! they cannot escape. / Make ready for them all thou canst of (armed) force and of horses tethered, that thereby ye may dismay the enemy of God and your enemy, and others beside them whom ye know not. God knoweth them. Whatsoever ye spend in the way of God it will be repaid to you in full, and ye will not be wronged. (*Al-Anfal* 8:56-60)

The next verse clarifies that if they do maintain their treaties, then the treaties are to be honored. *And if they incline to peace, incline unto it, and trust in God. Lo! He, even He, is the Hearer, the Knower.* (*Al-Anfal* 8:61)

The principles surrounding treaties is also seen in this verse:

> *Tell those who disbelieve that if they cease (from persecution of believers) that which is past will be forgiven them; but if they return (thereto) then the example of the men of old hath already gone (before them, for a warning). / And fight them until persecution is no more, and religion is all for God. But if they cease, then lo! God is Seer of what they do.* (*Al-Anfal* 8:38-39)

To command the state of non-violence through the observance of an established treaty with non-Muslim polytheists shows that **the Muslim community was willing, and indeed commanded, to live in a state of peace with their neighbors even if those neighbors practiced a religion other than Islam. When the Muslims are commanded to fight those who break their treaties, it is the breaking of the treaty that invites warfare, not the fact that the treaty-breakers are polytheists.**

The Prophet made several important treaties with the non-Muslim communities around Medina, and these were of more than one kind. Perhaps the best known is the treaty of Hudaybiyah, where the Muslim community made a truce with the Quraysh tribe allowing the Muslim community to make a pilgrimage to Mecca the following year. This treaty was noteworthy for its pragmatism: the Prophet

made certain concessions in favor of a greater good. Though they had set out to make a peaceful pilgrimage during the holy months where fighting was forbidden, they were met on the road by the Quraysh and ultimately did not reach Mecca that year as part of the treaty terms. Moreover, the Quraysh even demanded that the Prophet remove the divine Name *al-Rahman* and the title of "Messenger of God" from the treaty, which the Prophet agreed to despite the dismay of prominent companions such as 'Ali ibn Abi Talib, and even as staunch a Muslim as 'Umar ibn al-Khattab bristled at what he saw at the time as humiliating terms. Yet the Qur'an referred to Hudaybiyah in these terms: *Verily We have given thee a clear victory* (*Al-Fath* 48:1). Although the Muslims did not achieve their immediate aims of pilgrimage, the treaty of Hudaybiyah created an environment of free travel and peace which served to strengthen the Muslim community's position in Arabia.

Thus Muslims sought peace with non-Muslims, and in no case is the reason for Muslim armed struggle against non-Muslims the mere fact of their religious identity. As is made clear in the passages from the Qur'an cited above, the reason for armed struggle is a state of war (*haraba*) originating in the concrete *actions* taken by the non-Muslims to harm the Muslim community, not their state of disbelieving in God (*kufr*) or of belonging to another religion. As the

example of the Prophet shows, Muslims can make treaties with their enemies, even if they are polytheists, and they are expected by God to keep to their treaties. If hostilities resume with treaty-breakers, it is not because the treaty-breakers are non-Muslim but because they have re-entered a state of hostility. This in fact occurred on more than one occasion, notably the treaty of Hudaybiyah, which was meant to last ten years but which was rendered void by Meccans' actions against the Muslim community.

In short, in Islam treaties are not predicated on theology or religious identity. Rather, like treaties anywhere, they rely on the two parties faithfully adhering to the terms. As in all transactions in Islamic law, such as buying and selling, and even marriage, the religion of the person making a treaty has no legal bearing on the force of the treaty. **An agreement with a Muslim is no more or less binding than an agreement with a non-Muslim, whether it is a rental contract or the UN Charter.**

7

WHAT IS THE DISTINCTION BETWEEN PRE-EMPTION AND AGGRESSION?

SOME HAVE SOUGHT support for the idea Muslims can

kill disbelievers for their disbelief in the Prophet's *hadith* during the *al-Ahzab* campaign, "Now we campaign against them but are not campaigned against by them. We are going to them."[10] A similar type of support is sought in the battle of Khaybar, where the Muslims mounted a surprise attack against the Jews there, or at the battle of Mu'tah, where Muslims attacked the Byzantines.

If one restricted the meaning of hostility to shots being fired, then these examples might show that Muslims claim the right to unprovoked attack against others by reason of their being non-Muslims. However, an enemy need not be storming the gates in order to pose a grave and imminent danger. An enemy can have the intent to cause harm, or can be planning to cause harm, or can be conspiring with others who are already causing harm.

Indeed while there were several cases in which the Muslims "campaigned when they were not campaigned against", there were nevertheless reasons why this **cannot be considered aggression but rather pre-emption against a clear danger coupled with an intention of future aggression.** In the case of Banu Mustalaq, it came to the Prophet's attention that they were conspiring against the Muslims. In the case of Khaybar, the Prophet learned that Banu Khaybar had made a secret agreement with Banu Ghatafan to unite against them. In order to pre-empt this action, the Prophet staged a surprise attack. In

the case of the attack at Mu'tah, tribes to the north (which were under the protection of the Byzantines) showed their hostility against the Muslims by taking the egregious step of killing the Prophet's emissary. In the Tabuk campaign Muslims set out based on information that the Byzantines were preparing to attack.

There exists a saying in Arabic, "When the Byzantines are not campaigned against, they campaign." This saying should remind us that the modern concepts of pre-emptive war and aggression must be understood in their proper context. Until the twentieth century, war was an accepted right of all states. Indeed, in 1928 the Kellogg-Briand pact was the first major systematic attempt to renounce war as an instrument of national policy. Over the course of the 20th century the Kellogg-Briand Pact was followed by the Nuremberg Principles, the Charter of the United Nations, and the Geneva Conventions, all of which laid the foundation for current international law. These agreements constitute binding treaties between the signatories. They make military aggression between states illegal, and among other things forbid the acquisition of territory by war, define war crimes during the conduct of war, and govern the treatment of prisoners, civilians, and combatants.

Such questions were already an important part of Islamic law for more than a thousand years. Though the content of the law was different—reflecting a different

international environment—the effort to regulate relations between states was well-established in Islam long before the treaties of the 20th century. Indeed, while Islamic law flowed from principles laid down in the Qur'an and the life of the Prophet as part of a larger ethical law, the international treaties of the 20th century were, it must be said, fueled largely by the horror of the two world wars and the fear of having such episodes repeated.

8

WHAT IS THE DIFFERENCE BETWEEN "THE ABODE OF ISLAM" AND "THE ABODE OF WAR"?

FROM THE POINT OF VIEW of Islamic law, any Muslim signatory to the Charter of the UN and the Geneva Conventions is just as bound to abide by them as the Prophet was to abide by the treaties he completed with the pagan Quraysh and with other tribes of Arabia and beyond. The military encounters between political entities in the past cannot be judged by the same standards that we judge such encounters today, because in the absence of an explicit renunciation of international agreements all nations are in a *de facto* treaty with all others, though the situation is not usually framed in those terms. The classical laws of *jihad*

assumed—correctly—that **the default position between states was a state of war**, hence the name *Dar al-Harb*, or Abode of War, which is usually set in contrast to *Dar al-Islam* or the Abode of Islam. **This has been widely understood to mean that Muslims consider themselves obligated to wage war on all non-Muslim lands until they become part of *Dar al-Islam*, but this is not at all the case.** The label "the abode of war" signifies that the land in question is not in treaty with the Muslims and that hostilities can break out at any time. Recall that war was universally acknowledged as something states did to get what they wanted; there was no idea of violating international law or of becoming a "rogue" state. From the point of view of current international law, all states were in a sense rogue states because there was no mechanism for enforcing or even defining the rules of war, aside from customary practices such as the receiving of emissaries.

Thus the explicit rules of the Islamic law of *jihad* were not imposed from without, as has been the case for states in the twentieth century, but were realized from within. The state of affairs in 7th century Arabia and the surrounding areas made this "state of war" the rule rather than the exception. Unless an explicit treaty was made between two groups—in the case of Arabia, these fundamental units were usually tribes—then one could expect an attack at any time. The Qur'an reflects the awareness of the early

Muslim community to their weak and uncertain position in this hostile state of affairs:

> *Do they not see that We established a safe haven while people all around them were being snatched away?* (*Al-'Ankabut* 29:67)

> *And remember when you were a small, marginalized group in the land, living in fear that the people would snatch you away ...* (*Al-Anfal* 8:26)

> *They say, "If we follow the guidance with you we shall be snatched from our land."* (*Al-Qasas* 28:57)

Muslims are described as *Those whom the people warned, "Surely all the people have lined up against you so fear them."* (*Al 'Imran* 3:173)

The Surah of the Quraysh also testifies to the risks of living on the Arabian peninsula:

> *For the comforting of the Quraysh, the comforting of the winter and summer caravans. Let them, then, worship the Lord of this House, Who banished their hunger with food and their fear with security* (*al-Quraysh* 106:1-4)

The separation of the world into the Abode of Islam and the Abode of War reflects the reality, brutal and unavoidable, that the world was not always governed by the

universal treaties of today. The terms *Dar al-Islam* and *Dar al-Harb* are **not terms from the Qur'an or from the teachings of the Prophet,** but grew out of the work of jurists coming to terms with the new international profile of Islam. As such, **they also coined terms such as *dar al-sulh* ("abode of reconciliation") and *dar al-'ahd* ("abode of treaty"), referring to those lands not ruled by Islam but with which the Islamic state had some sort of peace agreement.** Such designations were common from the Abbasid period all the way through to the Ottoman Empire in the 20th century.

From the point of view of Islamic law, the gradual adoption and advancement of moral principles in international law is a welcome development, and brings the world closer to the Qur'anic ideal of non-aggression and peaceful coexistence. *And if they incline to peace, incline unto it, and trust in God. Lo! He, even He, is the Hearer, the Knower.* (*Al-Anfal* 8:61) This idealization of peace is also echoed in the Prophet's command, "Do not be hopeful of meeting the enemy, and ask God for well-being."[11]

9

IS FORCED CONVERSION AN ISLAMIC TEACHING?

SOME TEXTS EXIST which would, if misunderstood,

seem to contradict the spirit of the Qur'anic verses and *hadith* mentioned above regarding the role of one's religion in war. One of these is the *hadith* which reads, "I have been commanded to fight the people until they bear witness that there is no divinity but God and Muhammad is God's Messenger, perform the Prayer, and pay the Alms. When they have done this, their blood and property are safe from me, except by the right of Islam and their reckoning with God."[12]

Three main questions are raised. First, who are the people whom the Prophet is commanded to fight? Second, what is the defining characteristic of these people such that they are subject to the Prophet's fighting them? Third, and less obviously, is this *hadith* universal in its temporal scope, or is it limited to a specific time and situation?

A minority position holds that this *hadith* points to the fact that although in the beginning the Muslims were commanded to spread the truth of Islam peacefully, at a certain point this command was abrogated and from that point forward Muslims were commanded to fight non-Muslims until they accepted Islam. Abrogation (*naskh*) means that the legally binding status of a Qur'anic verse is superseded by the legally binding authority of a verse that is revealed later. For example, one verse of the Qur'an prohibits Muslims from praying while intoxicated, while a later verse abrogates this verse by promulgating an absolute prohibi-

tion on the consumption of alcohol. At issue here is whether a previous command to preach peacefully is cancelled by a later command to fight people until they accept Islam.

Among the verses which refer to preaching the truths in the Qur'an and inviting non-Muslims to Islam are the following:

> *Remind them, for thou art but a remembrancer, / Thou art not at all a warder over them. / But whoso is averse and disbelieveth, / God will punish him with direst punishment.* (*Al-Ghashiyah* 88:21-23).

> *But if they are averse, We have not sent thee as a warder over them. Thine is only to convey (the message).* (*Al-Shura* 42:48).

> *Whether We let thee see something of that which We have promised them, or make thee die (before its happening), thine is but conveyance (of the message). Ours the reckoning.* (*Al-Ra'd* 13:40).

> *Obey God and obey the messenger, and beware! But if ye turn away, then know that the duty of Our messenger is only plain conveyance (of the message).* (*Al-Ma'idah* 5:92).

Some of these verses are Medinan, which means that they were revealed *after* permission was given to the

Muslim community to struggle through force of arms.

This makes it clear that the preaching of Islam is a question of allowing the truth to reach the ears of those who have yet to hear it, not of forcing others to accept it. Indeed, to force another to accept a truth in his heart is impossible, as acknowledged clearly in the Qur'anic verse *There is no compulsion in religion. The right way has become distinct from error* (*Al-Baqarah* 2:256). This verse was revealed in Medina and was in fact directed at Muslims who wanted to convert their children from Judaism or Christianity to Islam.[13]

As the Qur'an is so clear that the Prophet's only responsibility as regards bringing others to the truth is only to preach it to them, to bring the good news of Paradise, and to warn of Hell, we are left with the *hadith* which claims that the Prophet has been commanded to fight until "the people" accept the oneness of God, the Messengerhood of the Prophet, perform the canonical Prayer, and pay the Alms, all of which is tantamount to their becoming Muslims.

The majority of the scholars of Qur'anic exegesis and law hold that the command to preach peacefully and to never coerce a person in his choice of religion was never abrogated and continued to hold sway through the end of the Prophet's life and beyond. Amongst this majority there are two main positions. Some hold that the people referred to in the verse are the Arabian idol-worshippers, while all

others fall into a separate category addressed by such verses as *There is no compulsion in religion* and *God forbids you not, with regard to those who fight you not for (your) religion nor drive you out of your homes, from dealing kindly and justly with them* (*Al-Mumtahanah* 60:8). A second group of scholars holds that the command enshrined in *There is no compulsion in religion* is universal and applies to everyone, be they idol-worshippers or Jews or Christians. **In both cases the only possible scope for "the people" is limited to those with whom the Prophet was engaged in conflict at the time**. The majority of scholars thus do not consider that "the people" in this *hadith* refers to all people everywhere.

10

WHAT IS THE "SWORD VERSE"?

ONE SOURCE OF some controversy is the so-called "sword verse", which reads:

> *When the sacred months have passed, kill the polytheists wherever you find them, capture them and besiege them, and lie in wait for them at every ambush. But if they repent, and perform the Prayer and give Alms, then let them alone. Indeed God is forgiving, merciful*. (*Al-Tawbah* 9:5)

There is no disagreement that indeed this verse commands the Muslims to kill the polytheists, but the question remains as to whether they are to be killed because they are disbelievers or because of their enmity towards the Muslims. Are they to be fought because they are hostile to the Muslims or because they reject Islam? The second part of the verse, which names repentance and the performance of the Prayer and the giving of alms as a condition by which the polytheists can save themselves from the Muslims, would seem to indicate that it is their unbelief, not their hostility, which is the motivation for Muslims to kill them. However, the next verse reads, *If any of the polytheists seeks asylum from you, grant him asylum until he hears the Word of God. Then convey him to his place of safety. That is because they are a people who do not know* (*Al-Tawbah* 9:6). This second verse commands Muslims to receive a polytheist if he seeks asylum, to preach the truth to him, and then to safely let him go. It sets no condition that he should repent or accept Islam. It is not a condition for the asylum seeker's safe return that he become a Muslim. Indeed, these two verses present not one but *two* possibilities for the non-Muslim to escape armed conflict with the Muslim community: the first is to accept Islam, as mentioned in the first verse, and the second is to seek asylum with the Muslims, as mentioned in the second verse.[14]

Some have tried, creatively and erroneously, to assert

that the second verse is abrogated by the first, but this is an abuse of the principles of abrogation, and twists verses of the Qur'an to mean what we want them to mean. In fact, it would be impossible for 9:5 to call for fighting against others solely based on their belief without it abrogating **no less than 140 other verses calling for peace with those who do not fight against Muslims, even if they are pagans**. Indeed, it would have to abrogate the verse *immediately following it*, 9:6. The verse *There is no coercion in religion* is not a command, but a statement of fact, of the same grammatical form as "There is no god but God." Recall that this verse, according to one account, was revealed in the context of people over whose religious preferences the Muslims had no control—children of theirs who were among an exiled tribe. It is a description of what religion is in relation to the human will. In Qur'anic exegesis, only commands can be abrogated, not truths. Thus by definition there is no way that "There is no coercion in religion" (a statement, or *khabar*) can become "Let there be coercion in religion" (a command, or *amr*). In fact, among the four Sunni schools of jurisprudence only one, the Shafi'i school, contains the view that a person's belief can be a reason for fighting against them. This view, however, is mitigated by the fact that an opposite view, in agreement with the majority, is also attributed to Shafi'i.

Moreover, it is also important to note that two similar-

sounding but distinct words are used in the Qur'anic verse which says *Kill the polytheists wherever you find them* and the *hadith* which reads, "I have been commanded to fight with the people until …" In the Arabic, the two verbs in question are *qatala*, which means to fight, kill, or murder, and *qaatala*, which means to fight, to combat, or to contend *with* something. The resulting verbal nouns are *qatl* for *qatala* and *qitaal* for *qaatala*. *Qatl* means killing, while *qitaal* means combat. *Saahat al-qitaal*, for example, means "battlefield". The difference is crucial and is sadly sometimes ignored. This is a case which demonstrates the importance of mastering Arabic before deciding on matters of Islamic law.

The Prophet did not say, "I will kill/slay/murder the polytheists until …" He said, "**I will fight with them/ combat them/contend with them …**" *Qatl* is an action which, both linguistically and practically, requires only one agent. *Qitaal* implies two agents, each contending with or resisting the other. **The use of *qitaal* implies a state of mutual hostility, or, from the Prophet's point of view, of a response to the polytheists' hostility.**

Misunderstanding concerning such texts as these can be corrected easily by referring to the traditional law. It is one thing to hunt for quotes which serve a predetermined purpose, and quite another to understand a text in its proper context and in light of the tradition that has dwelt upon it for over 1400 years. Such prob-

lems become compounded through mistranslation and, in some cases, deliberate misinformation.

11

WHAT ARE THE BASIC RULES OF COMBAT AS LAID DOWN IN ISLAM'S AUTHORITATIVE TEXTS?

THE FUNDAMENTAL RULES of combat are not academic extractions cleverly derived from history, but are explicitly laid out in Islam's authoritative texts:

> *Fight in the way of God against those who fight against you, but begin not hostilities. Lo! God loveth not aggressors.* (*Al-Baqarah* 2:190)

When the Prophet dispatched his armies he would say, "Go in the name of God. Fight in the way of God [against] the ones who disbelieve in God. Do not act brutally. Do no exceed the proper bounds. Do not mutilate. Do not kill children or hermits."[15] Once, after a battle, the Prophet passed by a woman who had been slain, whereupon he said, "She is not one who would have fought." Thereupon, he looked at the men and said to one of them, "Run after Khalid ibn al-Walid [and tell him] that he must not slay children, serfs, or women."[16] In another *hadith* the Prophet says

clearly, "Do not kill weak old men, small children, or women."[17]

Abu Bakr al-Siddiq, the first Caliph, gave these instructions to his armies:

> I instruct you in ten matters: Do not kill women, children, the old, or the infirm; do not cut down fruit-bearing trees; do not destroy any town; do not kill sheep or camels except for the purposes of eating; do not burn date-trees or submerge them; do not steal from the booty and do not be cowardly.[18]

Hasan al-Basri, one of the most important and influential of the second generation of Muslims, described the following as violations of the rules of war:

> ... mutilation (*muthla*), [imposing] thirst (*ghulul*), the killing of women, children, and the old (*shuyukh*)—the ones who have no judgment for themselves (*la ra'y lahum*), and no fighters among them; [the killing of] monks and hermits, the burning of trees, and the killing of animals for other than the welfare [of eating].[19]

The principles here are clear. The Islamic law of war prohibits naked aggression, the harming of non-combatants, excessive cruelty even in the case of combatants, and even

addresses the rights of animals and the natural environment.

12

WHAT IS THE STATUS OF NON-MUSLIMS UNDER ISLAMIC RULE?

AN INTEGRAL PART of any law of war is the law of peace. It has already been established that the mere fact of a people being non-Muslim cannot constitute a legally sanctioned reason to go to war with them, and it thus follows that there must be a legally sanctioned way of living together with peoples who are non-Muslim. Mention has already been made of the possibility and legitimacy of treaties with non-Muslims, even with pagans who are not enemies and are not planning hostilities. Treaties can obviously also be made with the People of the Book—a term usually understood to be Jews and Christians but which in practice has applied to other religious traditions with which Islam has come into contact, such as Buddhism, Hinduism, and Zoroastrianism.

In Islamic law the People of the Book who live under the political rule of Muslims are called *ahl al-dhimmah*, literally "people of protection", or often simply *dhimmi* ("protected person"). The doctrine of *dhimmah* is a natural out-growth

of the verse, *God forbids you not, with regard to those who fight you not for (your) religion nor drive you out of your homes, from dealing kindly and justly with them: for God loveth those who are just.* (*Al-Mumtahanah* 60:8)

As was mentioned above, that area where Muslims are sovereign and where Islam provides the law for the rulers is referred to as *Dar al-Islam*, usually translated as the Abode of Islam, but sometimes left untranslated or referred to, rarely, as Islamdom, to parallel the term Christendom. In fact, often when the term "Islam" is used in Western writings, popular and scholarly, what is being referred to is in fact *Dar al-Islam*, which is the political entity and not the religion itself. Indeed, a population need not be majority Muslim in order for it to be *Dar al-Islam*, and a population may be mostly Muslim without the area they inhabit being a part of *Dar al-Islam*.

Broadly speaking, there are two ways in which a given people may be considered *dhimmis*. In one case, the *dhimmis* live amongst the Muslim population and share the same streets, markets, and neighborhoods. In the second case, the *dhimmis* live in a land which is separate and where they run most of their own affairs. There are naturally degrees in between these two categories, but these are the two gene ral types.

In the first case the *dhimmis* live under the laws and within the framework provided by the Islamic state, but with a

substantial amount of autonomy as regards religious and cultural matters, often with the power to adjudicate certain disputes in their own separate system of courts. This was an extremely common arrangement, which began from the time of the Prophet and the first caliphs and continued until the dissolution of the Ottoman Empire in the 20th century. The protected people were not required to contribute to the military protection of *Dar al-Islam*, but they were subject to a poll-tax specific to them, most commonly known as the *jizyah* but which had other names as well.

In the second case, there exists an arrangement with the Islamic state that the *dhimmi* state will exist in peace with the Islamic state and will not help or support any enemy of Islam. Examples of this include the Prophet's arrangement with the people of Bahrain, who were Zoroastrians, and with the Christians of Najran. Under such an arrangement, the people remain completely autonomous and run their own affairs. They remain under the protection of the Islamic state, with no responsibility to provide active protection in return. The Islamic state no right to any of their wealth or property except for the *jizyah*. The following is the text of the agreement between the Christians of Najran and the Prophet:

> Najran and their followers are entitled to the protection of God and to the security of Muhammad the

> Prophet, the Messenger of God, which security shall involve their persons, religion, lands, possessions, including those of them who are absent as well as those who are present, their camels, messengers, and images [*amthilah*, a reference to crosses and icons]. The state they previously held shall not be changed, nor shall any of their religious services or images be changed. No attempt shall be made to turn a bishop, a monk from his office as a monk, nor the sexton of a church from his office.[20]

Such agreements were commonplace in the early conquests, such as the agreements that the Muslim commanders made with the Christian population of Aleppo, Antioch, Maʿarret Masrin, Hims, Qinnasrin, and Baʿlabak. Upon the surrender of Damascus, the general Khalid ibn al-Walid wrote the following to the inhabitants of the city:

> In the Name of God, the Compassionate, the Merciful. This is what Khalid ibn al-Walid would grant to the inhabitants of Damascus, if he enters therein: he promises to give them security for their lives, property, and churches. Their city shall not be demolished, neither shall any Muslim be quartered in their houses. Thereunto we give to them the pact of God and the protection of his Prophet, the caliphs

> and the believers. **So long as they pay the poll-tax, nothing but good shall befall them**.[21]

Perhaps most famous of all is the agreement between 'Umar ibn al-Khattab and the people of Jerusalem:

> This is the assurance of safety (*aman*) which the servant of God 'Umar, the Commander of the Faithful, has granted to the people of Jerusalem. He has given them an assurance of safety for themselves, for their property, their churches, their crosses, the sick and healthy of the city, and for all the rituals that belong to their religion. Their churches will not be inhabited [by Muslims] nor will they be destroyed. Neither they, nor the land on which they stand, nor their crosses, nor their property will be damaged. They will not be forcibly converted ... The people of Jerusalem must pay the poll-tax like the people of [other] cities, and they must expel the Byzantines and the robbers ...[22]

Such agreements also applied to other religions as well. This is the treaty made between the Prophet's Companion Habib ibn Maslamah and the people of Dabil:

> In the Name of God, the Compassionate, the Merciful. This is a treaty of Habib ibn Maslamah with the Christians, Magians [i.e., Zoroastrians], and Jews

> of Dabil, including those present and those absent. I have granted for you safety for your lives, possessions, churches, places of worship, and city wall. Thus ye are safe and we are bound to fulfill our covenant, so long as ye fulfill yours and pay the poll-tax ...[23]

The main advantage of the *dhimmis* over Muslims was the guarantee of their protection without the responsibility to actively engage in that protection themselves. Thus *dhimmis* were not required to go to war to defend the Islamic state. The main disadvantage was the *jizyah*, a tax which Muslims did not pay.

Dar al-Islam is an Islamic polity ruled by Muslims in accordance with Islamic law, where the sovereignty and primacy of Muslim power is to remain undisputed, and the protected peoples live under this arrangement in a state of mutual agreement, with certain advantages given and others taken. **Under the *dhimmi* arrangement a protected people is subjected to Muslim power in terms of political power only, while their identity, their language, their culture, and most importantly their religion remain intact and under their control. This means that aside from paying the *jizyah* and obeying the overarching laws applying to people living in *Dar al-Islam*, the protected people are left alone to live their lives as they see fit.** This included the education of their children, the

maintenance of their houses of worship, and even handling their own affairs (especially matters such as marriage, divorce, and inheritance). Under Islamic rule, *dhimmis* enjoyed true cultural and religious independence, and were in no way compelled to adopt the culture or religion of their rulers. Despite their theological differences with the members of other faiths, Muslims did not consider the conquered peoples to be fundamentally inferior and in need of edification in order to be truly civilized. Military conquest did not entail or require the conversion of the conquered people. Islamic law provided Muslims with a ready-made and legally binding way of dealing with non-Muslims without robbing them of their selfhood, their language, or their religion.

13

WHAT IS THE JIZYAH, OR POLL-TAX, ON NON-MUSLIMS?

ONE SOURCE OF CONFUSION is the misapplication of the verse *... until they give the poll-tax out of hand, humbled* (*Al-Tawbah* 9:29). A misunderstanding similar to the one which affects the Qur'anic verses pertaining to *jihad* occurs over the phrase *wa hum saghirun*, or "in a state of humility, low-

ness". That is to say, it is often thought that they pay the *jizyah* in a state of humility for being non-Muslims, but the state of being non-Muslim applies only to the giving of the *jizyah*, whereas **the state of being humbled is a result of the previous hostility and enmity exhibited by the group against the Muslim community.**

This is not to say that in Islamic history some rulers have not enforced a kind of humiliation to accompany the paying of the *jizyah* by the *dhimmi* communities, but in doing so they go against the established precedent and legal opinion. For example, Imam Nawawi, commenting on those who would impose a humiliation along with the paying of the *jizyah*, said, "As for this aforementioned practice (*hay'ah*), I know of know sound support for it in this respect, and it is only mentioned by the scholars of Khurasan. The majority (*jumhur*) of scholars say that the *jizyah* is to be taken with gentleness, as one would receive a debt (*dayn*). The reliably correct opinion is that this practice is invalid and those who devised it should be refuted. It is not related that the Prophet or any of the rightly-guided caliphs did any such thing when collecting the *jizyah*."[24] Ibn Qudamah also rejected this practice and noted that the Prophet and the rightly-guided caliphs encouraged the *jizyah* to be collected with gentleness and kindness.[25]

In a letter that 'Umar ibn 'Abd al-'Aziz sent regarding the *jizyah*, he gives the following instructions,

> Look to the protected people around you who are old and weak and who are no longer able to earn a living and pay them from the treasury of the Muslims such as will do them good. For indeed I have learned that the Commander of the Believers Umar ibn al-Khattab once passed an old man who was begging at people's doors. He said, "We have been unfair to you. We used to take *jizyah* from you when you were young, then neglected you when you were old." Then he said, "Pay him from the treasury of the Muslims such as will do him good."[26]

Moreover, the word *jizyah* itself simply derives from a root meaning "part", referring to the fact that it is taken as a part of the wealth of the protected peoples. In fact, the use of the word *jizyah* is not even required. The historian al-Tabari relates that some members of the Christian community asked 'Umar ibn al-Khattab if they could refer to the *jizyah* as *sadaqah*, literally "charity", which he agreed to.

It is also worth noting in this context that in most cases the *jizyah* taken was actually less than the *zakat*, or alms, paid by Muslims, which the *dhimmis* were not required to pay since the *zakat* is a religious requirement for Muslims only.

Another aspect of the debate over the status of protected peoples is the practice of requiring protected peoples to dress in some way that was recognizably distinct from

Muslims (such as a sash around the waist which Muslims would then not be allowed to wear**). In Islamic law such a ruling is the prerogative of the ruler, who may impose it for reasons of security, order, or for other reasons, though it is not required by Islamic law. It is worth noting that this practice was by no means universal and there is no record that the Prophet himself ever required it.**

The classical law governing protected peoples was developed in a world where religious communities were also political communities. Some have said that the protected peoples were "second-class" citizens, but this is to assume that all political arrangements can be compared to the modern nation-state and its concept of "citizenship". Indeed, many of the forms of independence the protected peoples enjoyed, such as independence in education and having religious courts, would scarcely be possible in the context of the modern nation state. In fact, the laws for protected peoples protect the very same Five Basic Rights (Religion, Life, Mind, Honor, Property) which apply for Muslims, and the rights granted to the protected peoples were generally the most one could expect short of granting total sovereignty to them, which would negate their connection with Dar al-Islam in the first place.

In previous times Islamic law saw dominance within Dar al-Islam as the only guarantee for these rights, but the

demand for obedience and deference from the protected people was geared, not towards some egotistical exaltation of Islam, but towards a just order where everyone's rights could be protected without undue advantage being taken. In the modern context, there is nothing in Islamic law which would preclude Muslims living as equal citizens in a state run by a democratically elected government, so long as their fundamental religious rights were protected.

14

DOES ORTHODOX ISLAM SANCTION REBELLION AGAINST POLITICAL AUTHORITY?

THE RELATIONSHIP of the Muslim believer to those in political power reaches back to the beginning of Islam, when the Prophet became not only the spiritual guide of the new community but its political leader as well.

The question that Muslims have had to wrestle with since then concerns the legitimacy of political authority. Even though there was never a separation of "church and state" in Islam, there has always been, since the advent of the Umayyad caliphate thirty years after the death of the Prophet, a *de facto* separation of power between the *ulama* or scholarly classes on the one hand, and the various caliphs, sultans, and kings on the other. One might call this

a separation between court and mosque, between secretaries and scholars. The connection between them was the duty of the ruler to dispose of the affairs of state in accordance with Islamic law and not his personal whim, and to do his part in maintaining the religion. It was the scholars who determined what that law was, and they functioned in various degrees of independence from the political rulers throughout most of Islamic history. **That is to say, the rule of Islam is not the rule of God directly, nor even the rule of the clerics, but the rule of law—a law whose form is independent of the ruler whose role it is to carry it out.**

As it relates to *jihad*, the question arises as to when it is permissible or even mandatory in Islamic law to take up arms against political authority. Spiritual or armed rebellion against the Prophet in the name of Islam would have been an absurdity, as he was God's chosen prophet and ruler and was thus universally acknowledged by anyone who called himself Muslim. However, after the Prophet, legitimacy and rebellion become real questions.

If a ruler openly declares *kufr* ("unbelief") in a way that is plain and not open to any reasonable doubt, then traditional Islam holds that it is a duty to rise up against him. The declaration of *kufr* must be clear, however. For example, the ruler may openly deny Islam and the veracity of the Prophet's claim to being a Messenger of God. He may openly mock and degrade some fundamental pillar of reli-

gion like the pilgrimage to Mecca or the fasting in Ramadan. He may also act in a way that conclusively proves his *kufr*, such as openly worshipping an idol. Such words and actions, if they were not mitigated by other factors, would constitute proof for the ruler's state of unbelief.

However, it is crucial to make a distinction, as traditional Islam does, between apostasy, which is a denial of truth, and sin or even simple error, which a failure to live up to it. Thus, rejecting the principle of the five daily prayers (which are performed with some variations amongst all Muslims) constitutes a negation of Islam itself, while being too lazy to pray is a sin. Mocking and degrading the Prophet is a rejection of Islam, but calling the mufti a silly fellow is, at worst, a sin. Prostrating before an idol in worship is a rejection of Islam, but rising when a respected elder enters the room is religiously neutral or even commendable. In traditional Islam, the sinner is allowed to respect the law and regret his weakness; by contrast, the disbeliever disregards the law in order to indulge his weakness. In any ethical system, the "should" or "ought" follows the "is", which is to say that the truth always precedes and determines moral judgment. *Kufr* endangers that truth, and destroys the basis for morality, while sin is a failure to live up to that truth. Indeed, the very identification of an act as a sin is a kind of affirmation of the truth which that sin fails to live up to.

Having said that, traditional Islam has recognized three ways in which a ruler may legitimately come to power: (1) through receiving the allegiance of *ahl al-hall wa'l-aqd*; (2) by being chosen as a successor by the previous ruler; (3) or by force, on the condition that this is not to unseat a legitimate ruler but rather occurs in the absence of one. *Ahl al-hall wa'l-aqd* literally means "people who untie and bind" or those with the authority to contract agreements. In the Islamic context they are those with religious and politically authority, namely the *ulama* and others who are the *de facto* representatives of the interests of the people.

Imam al-Nawawi said of political rulers, **"As for rising up against them and fighting them, this is forbidden by the consensus of Muslims, even if they are sinful tyrants (*fasiq*, *zalim*) ... The scholars have said that the reason why one should not separate from him and why it is forbidden to rise against him is the resulting strife, bloodletting, and corruption."**[27] This statement reflects the general consensus amongst traditional scholars, which is based on *hadith* of the Prophet such as,

> After me there will be rulers (*a'immah*, sing. *imam*) who will not follow my guidance or practice my Wont (*sunnah*). Among them men will rise with the hearts of devils and the bodies of men." He was asked, "What should we do if we encounter that?" He said, "Listen

> and obey their command. Even if they beat you and take your wealth, listen and obey."[28]

In another *hadith* he was asked, "Messenger of God, should we not oppose him by the sword?" He said, **"No, not so long as the Prayer is established among you. If you see something you hate in your ruler, hate his action, but do not cease to be obedient."**[29]

It becomes clear, then, that Islam does not expound a utopian ideology of a perfect world order. The Islamic tradition places paradise in the hereafter, not in this world, and recognizes that it is only within men's power to maximize the level of justice in the world while maintaining a balance between the spiritual and the worldly. In a perfect world, the ruler would be just, wise, and pious, and would deal fairly with people while doing his part to protect their spiritual welfare. However, in such cases where a choice must be made between spiritual well-being and worldly justice, Islam chooses the former. Man may gain the world and lose paradise, while a man who gains paradise loses nothing in the ultimate sense. Thus a tyrant who taxes excessively and unreasonably punishes dissent, while maintaining the structure and tradition of faith ("so long as the Prayer is established among you"), is superior to a ruler who makes the trains run on time but whose program up-roots the very pillars of faith.

But this perspective is not merely a matter of placing the spiritual over the material. It is also a common sense approach which wisely acknowledges that revolutions almost inevitably bring about a sum-total of suffering much greater than the previous order which they seek to overturn. Muslims do not advocate doing nothing in the face of tyranny, but rather believe that nonviolent methods of counsel and protest are ultimately better ways of improving the existing order. Indeed, Muslims are expected not to obey a ruler insofar as he commands them to go against the *Shar'iah* (Islamic law), but this is not the same as rebelling against a ruler who himself does not completely enact the *Shar'iah*. Those who advocate the overthrow of a ruler who does not rule in accordance with their view of the *Shar'iah* are a tiny minority within Islamic law. They often make a compound error: first they accept only their own vision of Islamic law, then they consider deviation from this vision to be a sin, and then they conflate this sin with unbelief, thus making the ruler subject to rebellion.

Moreover, since it is impermissible take up arms against a ruler who is not an open unbeliever, it follows that it is also impermissible and a sin from the point of view of Islamic law to take up arms against the various workers who carry out the wishes of the ruler—such as the army, the police, government officials, etc ... Even if it is shown that the ruler is an open unbeliever, it does not follow then that those

who work in a governmental or bureaucratic structure beneath him automatically become unbelievers whose blood can be shed. This "unbelief by association" is often taken to absurd extremes, to the point where people who pay taxes are considered to be complicit in the crimes of a state. Some have gone so far as to say that anyone who lives in a society which does not conform to their vision of Islamic law is guilty of *kufr* (unbelief), since they passively accept it instead of actively fighting against it.

15

HOW DOES THE ISLAMIC LAW OF WAR COME TO BE VIOLATED?

ISLAM IS THE second largest religion in the world and in history after Christianity. It is also today the world's fastest growing religion, with 1.5 billion adherents all over the world. As of 2007 CE, some 25% or so of the world's population in Muslim. There were, historically, three main *doctrinal and juridical* branches of the religion: Sunni, Shi'i and *Khawarij*. Currently (2007 CE) approximately 90% of all Muslims are *Sunni*, 9% are *Shi'i*, and less than 1% are *Ibadi*. The Sunnis (which include the Sufis or Mystics) are mostly followers of the four recognized schools (*Hanafi*, *Maliki*, *Shafi'i* and *Hanbali*) of law (*mathhabs*) and a minority

are Salafi/Wahhabi, who historically arose from one of the four schools (the *Hanbali*), but today are Sunnis who sometimes follow their own interpretations outside of the 'four schools'. Amongst the Shi'is, the *Ja'fari*s or *Ithna'ashari* ('Twelver') are the biggest group, followed by the *Zaydis* and the *Ismailis*. The *Ibadis* are descended from the original community of *Khawarij*, but the original radical *Khawarij* died out and were replaced by today's moderate *Ibadis*.

Aside from Islam's doctrinal and juridical divisions, a typical understanding of the spectrum in Islam, even within the Islamic world itself, places the fundamentalists on one side and the modernists on the other. The modernists are seen as open-minded, tolerant, peace-loving, and respectful of human rights. The fundamentalists are seen as fanatical, war-like, obscurantist, backwards, and tyrannical. Above all, from the Western point of view the modernists are "like us" and hence are not threatening, while the fundamentalists are inherently dangerous and different.

In fact, a more helpful and accurate description of the spectrum of the world's Muslims would be the following five categories, from extreme secularism on one end to ex treme sectarianism on the other. Understanding the differences is crucial to understanding *jihad* and the law of war.

Secular fundamentalists: A complete rejection of Islam as a substantial force in guiding society. At a

maximum, religion is a private affair, and should have nothing to say about human relations. Islamic civilization is something to be left behind, while modern Western civilization is to be emulated to the extent possible.

Modernists and Modern Secularists: Islam must adjust and change and learn the lessons of modernity; apologists holding that faith is valuable as a guide to ethics, but Islamic teachings should "change with the times". The values of the modern West are generally seen as the "norm" to which the Islamic world should adjust itself.

Traditionalists: Islam is the source of meaning and guidance for the inward and outward life. Islamic civilization is a source and treasure of intellectual, spiritual, and artistic nourishment. Loyalty to this tradition in no way precludes living sensibly and justly in the today's world, and indeed the tradition offers considerable flexibility in terms of forms of government and is a guarantor of basic rights.

Puritanical literalists: (Usually referred to as "religious fundamentalists" or "Islamists") Both traditional Islamic civilization and secular ideologies are failures. Muslims must pass over most of the civilization and

tradition after the first century or two after the Prophet. The state created by the Prophet and his successors was a golden age, and Muslims must duplicate it to the extent possible. Society must be cleansed of those elements which are "innovations" from the pure state of the early Muslim community.

***Takfiri*s**: (Sometimes called "jihadists" or "militant religious fundamentalists"). Those who do not follow true Islamic teaching (as defined by them) are no longer actually Muslim and fall outside of the protections of the law. Most self-identified Muslims and all non-Muslims are legitimate targets of violence, because they stand in the way of a very narrowly defined vision of Islam. *Takfir* means "to declare another to be an unbeliever/apostate". There are now both Sunni and Shi'i *Takfiri*s—or rather, some *Takfiri*s consider themselves to be Sunnis and others consider themselves to be Shi'is.

In reality the modernists and the puritanical literalists (the "fundamentalists") represent only a small percentage of the population of the Muslim world, perhaps less than 10% combined. The majority of people—90%—in the Islamic world fall within a range which should be called "traditional" and which itself encompasses a certain range of religiosity, but which is neither a complete affirmation of

the post-religious values which are so powerful today, nor of the religious extremism of the fundamentalists. The *takfiris* and the secular fundamentalists represent a still smaller sliver of the world's Muslim population. All told, there are no more than 150,000 militant *takfiris* (including both the "Sunni" and "Shi'i" strands) worldwide. **These are thus less than one hundredth of 1% of all Muslims (that is, less than 0.01%), or less than one in every ten thousand Muslims**. Secular fundamentalism also usually has little traction with the general population and is—paradoxically—limited to small rebel groups, such as the PKK in Turkey and the MEK (*Mujahedin-e khalq*) in Iran, and various establishment elites in a small number of Muslim countries.

That which we call "fundamentalism" today (puritanical literalism) has several salient characteristics vis-à-vis traditional Islam. First, puritanical literalists generally ignore or explicitly reject most of the classical learned tradition of jurists and theologians, and limit themselves to *their own* interpretation of the Qur'an, the *hadith*, and the first three generations of Muslims, which they take as authoritative (as do all Muslims). Second, they ignore or reject most of the philosophy, mysticism, and artistic production of Islamic civilization. This results in a kind of anti-intellectualism and in a dry literalism. Third, they view religion almost entirely as a project of social engineering combined

with a rigid obedientialism. Religion is thus reduced to a system of commands and prohibitions, with an excessive emphasis on outward conformity. Even worse, often these ideas are little more than a theological veneer for a crude ethnic chauvinism which seeks to universalize a tribal culture.

The modernists, for their part, generally share with the fundamentalists an aversion to the spiritual, artistic, and intellectual accomplishments of Islamic civilization, and have an undiscerning "West is best" approach to Islamic reform. Yet they both readily celebrate Islam's advances in science in technology, and both readily accept any modern technological innovation the West has to offer. These shared characteristics can be explained in light of the fact that both modernism and fundamentalism, in the Islamic world, are largely responses to the loss of power to the West over the last two hundred years. Thus, both modernism and fundamentalism blame traditional Islam for this failure, and both seek to re-establish the balance. The modernists hope to accomplish this by imitating their conquerors, while the fundamentalists hope to emulate the successes of the first generations of Muslims.

The secular fundamentalists and the *takfiris*, at the two extremes, are both intrinsically *utopian* in their outlook, the former striving to create a yet unseen paradise on earth while the latter hope to emulate a once realized golden age.

Falling into the fatal trap of any utopian ideology, both the secular and religious fundamentalists invert the traditional priorities and subjugate all values to the attainment of the utopia. Lenin's notorious statement, "You cannot make an omelet without breaking eggs," enshrines the notion that the perfect world—here on earth—justifies any crime, and describes the authoritarian approach of these two extremes to the rest of the world. Thus, the bombing of innocent Muslims by a Muslim or non-Muslim state can be justified in the name of democracy and freedom (or in another context the liberation of the world's workers, or the ascendancy of the Arian race) which means that some are chosen to die so that the rest may live "in freedom". Also, the bombing of innocent Muslims by non-state actors can be justified because they stand in the way of establishing an "Islamic state", or, in a perverted twist of spiritual logic, the killing of innocent Muslims in a terrorist attack is not really a crime because they will go to Paradise as a result of being innocent victims in an attack justified by its ends.

Neither secular fundamentalists nor their religious counterparts can reasonably claim an ultimate set of values by which to act, despite appearances to the contrary. When one can justify any act in the name of a worldly utopia then one has passed into pure utilitarianism. This utilitarianism allows the secular fundamentalist to declare, without a hint of irony, that freedom (the lives of some) must be sacrificed

for the sake of freedom (the liberty of others). It also allows the religious fundamentalist to assert, with the same obtuseness, that justice must be suspended (by taking innocent life) in order to preserve justice (the protection of innocent life).

What does all this mean for the law of war? In Islamic history, the law of war, though based on the Qur'an and the life of the Prophet, was constantly adapted to deal with new situations. Was it permissible to use fire as a part of a catapult weapon? What does one do in case of civilians inside of a citadel under attack? What constitutes the violation of a treaty? Questions such as these were always asked and answered in the context of the greater law, which was governed by immutable moral principles. This law, moreover, grew and was nurtured in an environment of spirituality, beauty, and the accumulated wisdom of the centuries beginning with the Prophet and continuing generation after generation. Islamic civilization grew more experienced and sophisticated, and individuals lived in a world where tradition was alive, and the experience (and mistakes) of the past were always available to learn from.

Though the modernists and puritanical literalists do not necessarily espouse the unjust use of violence (and indeed, the vast majority of modernists and "fundamentalists" are explicitly non-violent in their methods), their belief system removes the safeguards provided by centuries of tradition

by rejecting that tradition or treating it as irrelevant. **Even though Islamic law declares attacks against non-combatants, forced conversion, and naked aggression to be illegal, life within traditional Islamic civilization, with its integrated spirituality and nobility, would have made them generally unthinkable as well**.

The case of Bin Laden's "fatwa" ordering Muslims to kill both soldiers and civilians is illustrative of the problems involved. Bin Laden is trained as a civil engineer, not an authority in Islamic law, and it takes little investigation to uncover that his interpretations of Islamic law are uninformed and self-serving. He can only draw the conclusions he draws by utterly ignoring everything Islamic law has had to say about such questions. Using Bin Laden's *takfiri* cut-and-paste method, one can make the Qur'an and *hadith* say anything at all. That every top authority on Islamic law in the world rejects both Bin Laden's conclusions and his temerity in declaring a "fatwa" is, lamentably, often never mentioned in the West.

But such condemnation is not necessarily a problem for Bin Laden and his compatriots, because they never felt obligated to pay attention to traditional Islamic law in the first place. Ostensibly they claim to be following the Qur'an and the teachings of the Prophet, but their method amounts to a cherry-picking of sources to arrive at a conclusion that was decided beforehand. It is misleading to

present Bin Laden, and others like him, as men steeped in their religious tradition who take Islam's teachings to their logical conclusions. For all talk about "*madrasahs*", which is simply the word for "school", it is important to note that the terrorists who claim to fight in the name of Islam today are almost entirely men educated in medicine, engineering, mathematics, computer science, etc ... It is striking how *absent* graduates of recognized *madrasahs* or Islamic seminaries (such as al-Azhar in Egypt) are among the ranks of the terrorists. It is not difficult to understand why: Anyone who is exposed to the established traditional law could never, with honesty and good conscience, conclude that non-combatants are legitimate targets, or that other Muslims become unbelievers through mere disagreement with a certain interpretation of Islam.

Indeed, **being steeped in the tradition of Islamic law is the best inoculation against the illegal use of force**. Traditional Islam would not, and does not, recognize a civil engineer (Bin Laden) or a physician (Ayman al-Zawahiri) as competent to decide the rules of combat. Those who follow them do so for other reasons, or are much misled as to the orthodoxy of their leaders. **Unburdened by precedent, whether through ignorance or disavowal, these rebellious up-starts are free to pursue their goals unrestrained by morality or justice.** This is the sad legacy of both modernism and puritanical literalism: In seeking to

reform Islam, they "throw the baby out with the bath water", **losing the natural checks against aggression and injustice in the process of jettisoning those aspects of the tradition they find unhelpful to their projects**. Though not advocating such abuses themselves, the modernists and puritanical literalists leave the door open to the violation of basic human rights at the hands of the *takfiris* and the secular fundamentalists. Modernism did not create Hitler, but it removed the barriers, religious and cultural, which would have made his rise an impossibility. Similarly, puritanical literalism did not create Bin Laden, but it weakened the immune system, as it were, of Islamic society, leaving some within it susceptible to the contagion of takfirism.

By marginalizing traditional, mainstream Islam, one does not wipe out the poison. One loses the antidote.

CONCLUSION

AS WITH ANY RELIGION or system of law, when it comes to the Islamic law of war there is a gap between the ideal and its application in the world. It is possible to sift through the long history of war and peace in Islamic civilization and find examples where political powers and even religious scholars have acted and espoused views which are anti-thetical to the spirit and letter of the teachings of Islam outlined above regarding war and peace. Indeed, it has happened that Muslims have created situations amounting to forced conversion, or killed innocents in battle, or treated the members of other religions with contempt and cruelty. Yet there is an important difference between the flouting of high ideal and the institution of a vicious teaching. If abuses have occurred in the application of the Islamic laws of war, these exist in spite of those teachings, not because of them. **Moreover, a fair reading of Islamic history will show that in the majority of cases the Islamic law of war—with its principles of justice, sparing of innocents, and idealization of peace—were largely held to, and very often the conduct of Muslims in war exhibited the highest standards of chivalry and nobility.**

Moving forward from the time of the Prophet and Companions to the Crusades, we observe the figure of Salah al-Din al-Ayyubi, known to the West as Saladin, a

figure of almost proverbial gallantry in battle and kindness in victory. The reconquest of Jerusalem by Saladin was as memorable for its mercy as was the initial Christian conquest for its brutality, mirroring the mercy the Prophet showed to his enemies when he entered victorious into Mecca near the end of his life. But one need not go so far back in history to find such examples. In the colonial era several Muslim resistance movements distinguished themselves by their high standards of conduct in their opposition to European aggression. Among them were Imam Shamil (d.1871), the "Lion of Daghestan", in his thirty year war against Russian domination, and Emir 'Abd al-Qadir al-Jaza'iri (d.1883), in his battle against French imperialism. Both men were distinguished scholars of Islam and spiritual leaders, in addition to being almost legendary military commanders. Steeped in the legal and spiritual tradition of Islam, these heroes won the grudging admiration of their enemies. Emir 'Abd al-Qadir, having fought the French for so many years, risked his life defending the Christians of Damascus, and made no distinction between his defense of Algerian Muslims and his protection of the Christians of Damascus against his fellow Muslims. For these warriors, their wise courage and stern compassion were necessary outgrowths of the Qur'an and the teachings of the Prophet. They would not have recognized the Islamic principles of combat they so steadfastly

followed were they to witness some of the aberrations of the modern age.

In Islamic law, the ends do not justify the means, and justice is not predicated on creating a paradise on earth, whether that paradise is an imagined future or a recaptured past. The Islamic law of war has often come to be ignored, sadly, in the name of a totalitarian mindset which seeks to crush everything in its path for the sake of achieving its ultimate ends. According to such a view, compassion, nobility, beauty, and fairness are all to be sacrificed and then somehow recaptured later when the fighting ends. In this respect, the utopian rebels of today—whatever their religion or ideology—have much more in common with Lenin than with Saladin.

If we have not dwelt on historical battles or the minutiae of legal discussions through the centuries it is because the principles are so clear, even self-evident. The rules of war and peace in Islam can be distilled into three principles: (1) Non-combatants are not legitimate targets, and as we have seen this not only includes women, children, and the elderly but also animals and the natural environment. (2) The fact of someone's being non-Muslim does not make them a legitimate target of attack. The Islamic conquests were political in nature, and large areas under Muslim rule remained non-Muslim for centuries. The agreements cited above show that the Muslims' intention was never to con-

vert by force. (3) Muslims are expected to live in peace with their neighbors whenever possible, and must respect treaties, but this never precludes the right to pre-emptive or responsive self-defense. Indeed, fourteen centuries ago Islam drew a line between pre-emption and aggression, allowing the former (as in the Prophet's campaigns at Khaybar and Mu'tah) and condemning the latter (*Fight in the way of God against those who fight against you, but begin not hostilities. Lo! God loveth not aggressors*) (*Al-Baqarah*, 2:190). In sum, God asks neither that Muslims be belligerent nor that they be pacifist. **Rather, they must love peace but resort to force when the cause is just.**

FURTHER READING (IN ENGLISH)

David Dakake. "The Myth of a Militant Islam," in *Islam, Funda-mentalism, and the Betrayal of Tradition*, edited by Joseph Lum- bard (World Wisdom, Bloomington, Indiana, 2004), pp. 3-37: Discusses the Bin Laden "fatwa", the nature of authority in Islam, and the laws of *Jihad*.

Khaled M. Abou El Fadl. *The Great Theft : Wrestling Islam from the Extremists* (HarperCollins, 2005): Valuable for its discussion of puritanical literalism vs. traditional law.

Mohammad Hashim Kamali. *Principles of Islamic Jurisprudence* (Islamic Texts Society, 2005): One of the most complete and accessible introductions to Islamic law. Also valuable for its discussion of the "sword verse" (pp. 223-225).

Reza Shah Kazemi. "Recollecting the Spirit of Jihad," in *Islam, Fundamentalism, and the Betrayal of Tradition*, edited by Joseph Lumbard (World Wisdom, Bloomington, Indiana, 2004), pp.121-142: Addresses the spiritual dimensions of *jihad* and the case of Emir 'Abd al-Qadir's resistance against the French and his protection of Syrian Christians.

Vincenzo Oliveti. "The Myth of 'the Myth of a Moderate Islam'", in *Islamica Magazine,* no.15 (2006). An excellent treatment of common allegations of Islamic endemic violence.

Rudolph Peters. *Jihad in Classical and Modern Islam: A Reader* (Princeton, 1996): A sampling of some classical and contemporary treatises pertaining to *jihad*.

(IN ARABIC)

Abdullah Bin Bayyah. *Al-Irhab: Al-Tashkhis wa'l-hulul*: A discus-sion of terrorism. See also: www.binbayyah.net

Muhammad Sa'id Ramadan al-Buti. *Al-Jihad fi'l-Islam* (Damas-cus: Dar al-Fikr, 2005): An excellent overall discussion of the issues pertaining to *jihad*, from an eminent scholar and recog-nized authority, including the laws of war, protected peoples, political rebellion, preaching Islam (*da'wah*), treaties, and forced conversion.

Ali Jumu'ah. *Questions and Answers on Jihad in Islam* (Egypt, Supreme Council for Islamic Affairs, n.d.).

NOTES

1. An archival search of the *New York Times* for "holy war" or "jihad" shows that this term is still a standard translation of *jihad*, very often taking the form "*jihad*, or holy war". Or one can enter the term "holy war" into a search on Google News and see that it is still a widespread translation of *jihad*. Even sympathetic and responsible authors perpetuate the equation between the two, such as Juan Cole, *Sacred Space and Holy War* (I. B. Tauris, 2002). The publishing world is full of pro-vocative title such as Peter Bergen's, *Holy War, Inc.: Inside the Secret World of Osama bin Laden* (Free Press, 2002).
2. This phrase even found its way into a speech by the Pope in September 2006, albeit in the form of a quotation from a Byzantine emperor. Though the Pope said he regretted the reaction, he never disavowed the statement nor did he apologize for it.
3. This term was even used by President Bush (in a speech before the National Endowment for Democracy in October 2005), and for a time became popular with certain right-wing intellectuals and media talking heads, though it fell out of favor after significant criticism as an empty propaganda term, having been used to describe people and groups as disparate as al-Qaeda, the government of Iran, and Syria. The first is a stateless terrorist group who hate Shi'is, the second is a Shi'i religious state, and the third is a secular state run by an Alawi elite ruling over a Sunni majority. The fact that one term mean all these things signifies that it is devoid of any

real content. The word "fascism" evokes the idea of a malevolent global movement, wherein lies its power as a "buzzword". Writing as far back as 1944, George Orwell, writing for the British public, pointed out that the word "fascist" had become so nebulous and overused it lacked any precise mea-ning: "Except for the relatively small number of Fascist sympathisers, almost any English person would accept 'bully' as a synonym for 'Fascist'. That is about as near to a definition as this much-abused word has come." Little has changed in the use of this word. It is obvious that the vigilante rebels of al-Qaeda have little in common with the military-industrial-state apparatus that was the core of 20th century European fascism, possessing neither a military, industry, or state.

4. "Infidel" comes from the Latin *infidelis* meaning un-faithful. As a technical term in the Catholic Church it denoted those who were not baptized, such as Muslims or Jews. The word *kafir* literally means "to cover" and originally signified a kind of ingratitude, meaning that one "covered over" the gifts or blessings one was given. It thus has the sense of denial and rejection. Practically speaking, it is used in a way similar to "infidel", but with one crucial difference: by and large Muslims did not call non-Muslims *kafir* unless they were pagan or atheist. It would be contradictory to call a Jew or Christian a *kafir*, since the Qur'an often calls upon them to follow their own religion more faithfully (5:66, 5:68). Infidel goes back at least as far as the 11th century *The Song of Roland* (*Chanson de*

Roland), where the "infidels" are the Muslims in the Holy Land. It also appears in the King James Version in 2 Corinthians 6:15, *And what concord hath Christ with Belial? or what part hath he that believeth with an infidel?* and 2 Corinthians 6:14-16 *But if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.*

This term is noteworthy because Muslims themselves almost never use the word "infidel" to translate *kafir* (preferring "unbeliever", "disbeliever", "denier"), yet critics of Islam regularly accuse Muslims of this or that view in relation to "infidels". For example, a contemporary convert to Christianity from Islam, Nonie Darwish, has written a book, *Now They Call Me Infidel* (Sentinel HC, 2006). Has anyone actually called her that specific word, or is it her own trans-lation? The word "infidel" effectively conjures the emotional impact of this term as a part of the West's collective memory, disregarding the fact that the term has no resonance for a Western Muslim, and means something significantly different from *kafir*. Another book by Ayaan Hirsi Ali, another former Muslim, bears the title *Infidel* (Free Press, 2007), implying that this is the label she now bears from some undefined group of Muslims. Actually, as an atheist the term Latin-based word "infidel" more strongly demarks her relationship with Christianity than with Islam.

5. Often misunderstandings about the Qur'an can be easily cleared up by referring to the classical and recognized Qur'anic commentaries, such as those of al-Tabari (*Jami' al-*

bayan 'an ta'wil ayat al-Qur'an), Fakhr al-Din Razi (*Mafatih al-Ghayb*, or *al-Tafsir al-Kabir*), Ibn Kathir (*Tafsir Ibn Kathir*), al-Qur-tubi (*al-Jami' li-ahkam al-Qur'an*), al-Baydawi (*Tafsir al-Baydawi*), al-Zamakhshari (*al-Kashshaf 'an Haqa'iq al-Tan-zil*), and many others who are well known to the scholarly tradition, and which are our starting point. Though simply referring to such works is not sufficient in itself to arrive at a conclusive and binding knowledge of a particular issue, it is worth noting that many of those who speak about *jihad* and war never bother to make reference to the classical commentaries at all.

6. Al-Nasa'i, *al-Sunan, Kitab al-Ba'yah*, with similar *hadith* in Ibn Majah's *Sunan*, *Kitab al-Fitan* and in the *Sunan* of Abu Dawud, *Kitab al-Mulahim*.
7. Narrated by Daylami, with a similar *hadith* narrated by Tirmidhi in his *Sunan*, *Kitab Fada'il al-Jihad*. See Muham-mad Sa'id Ramadan al-Buti, *al-Jihad fi'l-Islam* (Damascus: Dar al-Fikr, 2005) p.21.
8. Ibn Majah, *al-Sunan*, *Kitab al-Adab*.
9. Ibn Kathir relates that many famous early figures of Islam such as Ibn 'Abbas, Mujahid, Muqatil ibn Hayyan, Qataadah and others said that this is the first verse revealed concerning *jihad*. *Tafsir al-Qur'an al-'Azim* (Riyadh: Dar al-Salam, 1998), vol.3, p.103.
10. Al-Bukhari, *al-Sahih*, *Kitab al-Maghazi*.

11. Ibid., *Kitab al-Tamanni.*
12. Ibid., *Kitab al-Iman*.
13. The second caliph, 'Umar ibn al-Khattab, had a Christian servant named Asbaq. When Umar invited him to Islam, the servant refused, to which Umar replied, quoting the Qur'an, "*There is no compulsion in religion*," and then said, "Asbaq, if you were to accept Islam I would have entrusted you with some of the Muslims' affairs." In another incident, 'Umar said to an old woman who had not accepted Islam, "Become Muslim, old woman, become Muslim. God sent Muhammad with the truth." She replied, "I am an old woman who is close to death." Umar said, "Dear God, bear witness!" and he rec-ited *There is no compulsion in religion*. (Buti, p.52)
14. Once a polytheist asked Ali if they would be killed if one of them were to come to Prophet with some need or to hear the Word of God. Ali replied in the negative, and quoted 9:6 on asylum for the polytheists. (Buti, p. 57 quoting from *al-Jami' li-ahkam al-Qur'an,* 8:76)
15. Ibn Kathir, *Tafsir al-Qur'an al-'Azim* (Riyadh 1998) pp.308-9. Many of the selections and translations of this section are taken from David Dakake, "The Myth of a Militant Islam," in *Islam, Fundamentalism, and the Betrayal of Tradition,* edited by Joseph Lumbard (World Wisdom, Bloomington, Indiana, 2004), pp.3-37.
16. See Ibn Taymiyyah *al-Siyasa al-Shar'iyyah fi Islah al-Ra'i wa'l-*

Ra'iyyah, quoted in Peters, p.49. For a similar *hadith* see Bukhari 3052, *Kitab al-Jihad*.

17. The *Sunan* of Abu Dawud, *Kitab al-Jihad*.
18. Malik's *Muwatta'*, *Kitab al-Jihad*.
19. Ibn Kathir, *Tafsir*, Vol.1, p.308.
20. Baladhuri, *Futuh al-buldan*, trans. P. Hitti as *Origins of the Islamic State* (New York: AMS Press) vol.1, p.100.
21. Ibid. 187.
22. Al-Tabari, *The History of al-Tabari*, v. XII: The Battle of al-Qadissiyyah and the Conquest of Syria and Palestine, trans. Y. Friedmann (Albany: SUNY Press, 1985), p.191.
23. Baladhuri vol.1, p.314.
24. *Rawdat al-Talibin,* 10:315-16 (see Buti, p.133).
25. *Al-Mughni,* 4:250 (see Buti, p.133).
26. See Buti, p.134.
27. From Nawawi's commentary upon the *Sahih* of Muslim, 12:229 (see Buti, p.149).
28. Muslim, *al-Sahih*, *Kitab al-Imarah.*
29. Ibid., *Kitab al-Imarah*.

والحمد لله رب العٰلمين

And praise be to God, the Lord of the worlds

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